ALICE E. DEETZ

IBLA 80-344 Decided May 29, 1980

Appeal from decision of the California State Office, Bureau of Land Management, declaring mining claims abandoned and void. CA MC 16024, CA MC 16025.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Assessment Work -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Assessment Work -- Mining Claims: Recordation

   Where the owner of an unpatented mining claim located prior to, but recorded with BLM after Oct. 21, 1976, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Oct. 22, 1979, the claim is properly deemed abandoned and void.

2. Estoppel

   Estoppel will not lie where assertedly misleading advice is timely rebutted by the adoption of a regulation clarifying the advice given.

3. Administrative Authority: Generally -- Constitutional Law: Generally -- Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Department of the Interior, as agency of executive branch of Government, is not a proper forum to decide whether nor not the mining claims recordation provisions of the Federal Land Policy and Management Act of 1976 are constitutional.

APPEARANCES: Fred W. Burton, Esq., Yreka, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Alice E. Deetz appeals from a decision dated January 17, 1980, of the California State Office, Bureau of Land Management (BLM), declaring the Gravel Pit No. 1 Black Butte and the Gravel Pit No. 2 Black Butte placer mining claims abandoned and void, because of appellant's failure to timel file evidence of assessment work performed or a notice of intention to ho the claims as required by the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1(a).

The claims were located in 1948 and the notices of location were file properly for recordation with BLM on May 10, 1979. 1/ With respect to claims located prior to October 21, 1976, the above cited regulation requires:

> (a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, which ever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. [Emphasis supplied.]

Appellant's evidence of assessment work (proof of labor) was actually received by BLM on December 28, 1979.

In her appeal appellant refers to and encloses an "Amended Notice to Mining Claimants" issued by the California State Director on January 28, 1977. The notice apprised mining claimants of filing requirements including the requirements of 43 CFR 3833.2-1(a), supra.

1/ This is the date the filing fee was paid.

In the statement of reasons, appellant apparently contends that she had until December 31 in the calendar year following the year of recording, t file evidence of assessment work. Appellant also contends that the decision appealed from deprives her of constitutional rights.

[1] Under the facts of the case at bar, appellant owns claims locate before October 21, 1976, and recorded properly with BLM on May 10, 1979. Under FLPMA and its implementing regulations, since the claims were locat prior to October 21, 1976, and recorded in 1979, evidence of appellant's assessment work was due on or before October 22, 1979, or before Decembe 30, 1980, or whichever is the sooner of the two dates described in the regulation. The Board has held repeatedly that where these required documents are not timely filed, the mining claims are properly declared abandoned and void. E.g., Valda Waters, 44 IBLA 272 (1979); Charles Caress, 41 IBLA 302 (1979); Al Sherman, 38 IBLA 300 (1978). Filing in a local county recorder's office does not obviate strict compliance with th deadlines outlined in Subpart 3833. See Nuclear Power and Energy Company 41 IBLA 142 (1979).

Appellant asserts she received erroneous advice from BLM personnel a suggests the application of the doctrine of estoppel. Admittedly, the "Amended Notice to Mining Claimants" issued by the California BLM State Office, is not a model of clarity. Some might even suggest it is misleading, if not palpably erroneous. We do note, however, that the notice provides in part:

> 1. The owners of claims located prior to October 21, 1976, shall within three (3) years, file a copy of the official record of the notice of location or certificate of location that was recorded in the county where the claim is located under State law.
>
> * * * * * * *
>
> 2. Mining claimants shall file (1) a copy of affidavit of assessment work performed, (2) a copy of the detailed report of geological, geophysical, and geochemical survey required under 30 U.S.C. 28-1, or (3) a notice of intention to hold the mining claim (including, but not limited to, such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work). Each document must contain the date on which it was recorded in the county.
>
> a. The owners of claims located prior to October 21, 1976, shall within the three (3) years above stated, and prior to December 31 of each calendar year following the calendar year of recording with the

> California State Office, file one of the above three instruments. [Emphasis supplied.]

One could conclude, not irrationally, that a mining claimant whose claim was located prior to October 21, 1976, could file his proof of assessment work or notice of intention to hold the claim with BLM on or before December 30, 1979.

[2] At first blush, it might appear that estoppel could operate to preserve appellant's rights. See, e.g., Moser v. United States, 341 U.S. 41 (1951); Georgia-Pacific Co. v. United States, 421 F.2d (9th Cir. 1970) United States v. Lazy F C Ranch, 481 F.2d 985 (9th Cir. 1973); and United States v. Wharton, 514 F.2d 406 (9th Cir. 1975).

However, despite the misleading data in the "Notice to Mining Claimants," the governing regulation, 43 CFR 3833.2-1(a), was amended in 44 FR 9723 (Feb. 14, 1979), to clearly provide that the owner of an unpatented mining claim located prior to October 21, 1976, "[S]hall file * * * on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, which ever date is sooner, evidence of annual assessment work * * *" (emphasis supplied).

In Charles House, 33 IBLA 308, 310 (1978), the Board stated:

> In their statement of reasons, Appellants suggest that the Government should be estopped from enforcing this separate application rule because an employee of BLM suggested that they file their application in this manner, and because at no time did BLM advise them of this rule, despite constant contact with BLM during the application procedure. This suggestion is without merit. A representation by a Government employee that a rule of law is other than it actually is cannot change the force and effect of that rule, and the Department is not bound by such a representation. The incorrect or unauthorized acts of government employees may not override valid rules. Atlantic Richfield Co. v. Hickel, 432 F.2d 587, 591 (10th Cir. 1970). See Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384 (1947); Utah Power and Light Co. v. United States, 243 U.S. 389, 409 (1917); Parker v. United States, 461 F.2d 806 (Ct. Cls. 1972); Administrative Appeal of Joe McComas, 5 IBIA 125, 83 I.D. 227 (1976); Marathon Oil Company, 16 IBLA 298, 81 I.D. 447 (1974); Mark Systems, Inc., 5 IBLA 257 (1972).

The rule published February 14, 1979, clearly overrode any misleading advice appellant may have received. We are constrained to the view that estoppel is inappropriate in the case at bar.

[3] Appellant's arguments on constitutional law cannot be considered by this Board. The Department of the Interior as an agency of the executive branch of Government is not a proper forum to consider whether the recordation provisions of FLPMA are constitutional. Charlie Carnal, 43 IBLA 10 (1979); cf. Masonic Homes of California, 4 IBLA 23, 78 I.D. 31 (1971).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Edward W. Stuebing
Administrative Judge